

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

FILED

JAN 10 2008

SECRETARY, BOARD OF
OIL, GAS & MINING

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IN THE MATTER OF FORMAL RULEMAKING TO :
AMEND THE COAL REGULATORY PROGRAM :
RULES AT R645-100 (ADMINISTRATIVE: :
INTRODUCTION), R645-300 (COAL MINE :
PERMITTING: ADMINISTRATIVE :
PROCEDURES), AND R645-301 (COAL MINE :
PERMITTING: PERMIT APPLICATION :
REQUIREMENTS) REGARDING THE TOPICS OF :
INTERMITTENT STREAM, CATCHALL :
STATEMENTS, AND SEALING OF WELLS :

DIVISION'S REQUEST TO
COMMENCE FORMAL
RULEMAKING

DOCKET NO. 2008-002
CAUSE NO. RCOAL-2008-01

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The Division of Oil, Gas & Mining ("Division") hereby requests that the Board of Oil, Gas & Mining ("Board") at its regularly scheduled hearing on January 23, 2008 commence formal rulemaking to modify portions of the current rules of the Utah Coal Regulatory Program involving the (1) the definition of Intermittent Streams, (2) requirements for sealing of wells, and (3) requirements for requiring additional information from an operator (Catchall Statements). The Division hereby requests that the Board file the proposed changes attached to this Request in accordance with the requirements of the Utah Administrative Rulemaking Act, Utah Code §§63-46a-1 et seq. (2007), schedule a public hearing and take such action as required to formally adopt these proposed changes to current rules. The proposed changes are presented to the Board with this request to commence formal rulemaking as the result of an extensive informal review process conducted by the Division at the direction of the Board. The informal rulemaking process was undertaken to study the topics raised by a letter from the Utah Mining Association ("UMA") to the

Division on November 27, 2006, and the Division's report to the Board at the December 2006 briefing.

The informal rulemaking process included nine meetings in 2007 with participation from the Division, the UMA, and other interested parties. The Division also provided nine reports to the Board during 2007 to provide the status on the continued efforts and progress. The Informal Rules Review Group has also reviewed these three topics for rulemaking and comments were provided during 2007 and January 2008. As a result, the Division believes the participants in the informal rulemaking process have reached agreement on these proposed rules.

Attached are the proposed rule amendments, as agreed upon by the informal review process, dated January 9, 2008, with deletions shown in strike-out and additions shown as underlined:

UMA Topic #5: Intermittent Stream, 2 pages,

UMA Topic #4: Catchall Statements, 1 page,

UMA Topic #3: Sealing of Wells, 1 page.

If the Board decides to commence formal rulemaking the proposed rules will be filed with the Division of Administrative Rules (e-Rules filing). Provided the e-Rules filing can be completed by February 1, 2008 as expected, the proposed rule amendments would appear in the Utah State Bulletin on February 15, 2008. The Board may elect to take public comment at a Board hearing on the rules after they are published in the Utah State Bulletin. A public hearing may be held as part of the regularly scheduled Board Hearing on f February 27, 2008.

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A minimum 30-day comment period extending through March 17, 2008 is required by the Utah Administrative Rulemaking Act. Assuming no changes are made to the rules as proposed, the Board could grant its final approval of the rules at the regular hearing day on March 26, 2008 and the changes could be made effective on the day of the March Board Hearing, since it would meet the requirement of no fewer than seven calendar days after the close of the public comment period.

The Division requests that the Board commence rulemaking and proceed to file the Rules with the Division of Administrative rules, set a date for a public hearing, and take action to formally adopt the rule changes as proposed on the attached exhibits.

DATED this 10th day of January, 2008.



Steven F. Alder,
Assistant Attorney General
for Utah Division of Oil, Gas, & Mining.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing DIVISION'S REQUEST TO COMMENCE FORMAL RULEMAKING for Docket No. 2008-002, Cause No. RCOAL-2008-01 to be mailed with postage prepaid, this 11 day of January, 2008, to the following:

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Utah Division of Oil, Gas & Mining
Rulemaking Process: Commence Formal
UMA Topic #5: Intermittent Stream
January 9, 2008

Proposed Rule Change in part of R645-100-200.:

“Intermittent Stream” means ~~(a) a stream, or reach of a stream, that drains a watershed of at least one square mile, or (b)~~ a stream, or reach of a stream, that is below the local water table for at least some part of the year and obtains its flow from both surface runoff and groundwater discharge.

R645-301-535.210. Rock-core chimney drains may be used in a head-of-hollow fill, instead of the underdrain and surface diversion system normally required, as long as the fill is not located in an area containing intermittent or perennial streams or ephemeral streams that drain a watershed of at least one square mile. A rock-core chimney drain may be used in a valley fill if the fill does not exceed 250,000 cubic yards of material and upstream drainage is diverted around the fill.

R645-301-535.223. Grading may drain surface water away from the outslope of the fill and toward the rock core. In no case, however, may intermittent or perennial streams or ephemeral streams that drain a watershed of at least one square mile be diverted into the rock core. The maximum slope of the top of the fill will be 33h:1v (three percent). A drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case will this pocket or sump have a potential capacity for impounding more than 10,000 cubic feet of water. Terraces on the fill will be graded with a three to five percent grade toward the fill and a one percent slope toward the rock core.

R645-301-731.610. No land within 100 feet of a perennial stream or an intermittent stream or an ephemeral stream that drains a watershed of at least one square mile will be disturbed by coal mining and reclamation operations, unless the Division specifically authorizes coal mining and reclamation operations closer to, or through, such a stream. The Division may authorize such activities only upon finding that:

731.611. Coal mining and reclamation operations will not cause or contribute to the violation of applicable Utah or federal water quality standards and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

731.612. If there will be a temporary or permanent stream channel diversion, it will comply with R645-301-742.300.

R645-301-742.320. Diversion of Perennial and Intermittent Streams and Ephemeral Streams that Drain a Watershed of at Least One Square Mile.

742.321. Diversion of ~~perennial and intermittent~~ streams within the permit area may be approved by the Division after making the finding relating to stream buffer zones under R645-301-731.600. This applies to perennial and intermittent streams and ephemeral streams that drain a watershed of at least one square mile.

742.322. The design capacity of channels for temporary and permanent stream channel diversions will be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

742.323. The requirements of R645-301-742.312.2 will be met when the temporary and permanent diversion for perennial and intermittent streams and ephemeral streams that drain a watershed of at least one square mile are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

742.324. The design and construction of all stream channel diversions of perennial and intermittent streams and ephemeral streams that drain a watershed of at least one square mile will be certified by a qualified registered professional engineer as meeting the performance standards of R645-301 and R645-302 and any design criteria set by the Division.

R645-301-742.330 Diversion of Miscellaneous Flows.

742.331. Miscellaneous flows, which consist of all flows except for perennial and intermittent streams and ephemeral streams that drain a watershed of at least one square mile, may be diverted away from disturbed areas if required or approved by the Division. Miscellaneous flows will include ground-water discharges and ephemeral streams that drain a watershed of less than one square mile.

742.332. The design, location, construction, maintenance, and removal of diversions of miscellaneous flows will meet all of the performance standards set forth in R645-301-742.310.

742.333. The requirements of R645-301-742.312.2 will be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

R645-301-742.412. No part of any road will be located in the channel of an intermittent or perennial stream or an ephemeral stream that drains a watershed of at least one square mile unless specifically approved by the Division in accordance with applicable parts of R645-301-731 through R645-301-742.300.

Utah Division of Oil, Gas & Mining
Rulemaking Process: Commence Formal
UMA Topic #4: Catchall Statements
January 9, 2008

R645-300-130. Review of Permit Application.

131. General.

131.100. The Division will review the application for a permit, permit change, or permit renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the Division, either granting, requiring modification of, or denying the application. If an informal conference is held under R645-300-123 the decision will be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under R645-300-210.

131.110. Application review will not exceed the following time periods:

131.111. Permit change applications.

131.111.1. Significant revision - 120 days.

131.111.2. Amendments - 60 days.

131.112. Permit renewal - 120 days.

131.113. New underground mine applications - One year.

131.114. New surface mine applications - One year.

131.120. Time will be counted as cumulative days of Division review and will not include operator response time or time delays attributed to informal or formal conferences or Board hearings.

131.200. The applicant for a permit or permit change will have the burden of establishing that their application is in compliance with all the requirements of the State Program.

131.300. If, after review of the application for a permit, permit change, or permit renewal, additional information is required, the Division will issue a written finding providing justification as to why the additional information is necessary to satisfy the requirements of the R645 Rules and issue a written decision requiring the submission of the information.

Utah Division of Oil, Gas & Mining
Rulemaking Process: Commence Formal
UMA Topic #3: Sealing of Wells
January 9, 2008

R645-301-551 Casing and Sealing of Underground Openings. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effects, each shaft, drift, adit, tunnel, drill hole, or other opening to the surface from underground will be capped, sealed and backfilled, or otherwise properly managed, as required by the Division and consistent with MSHA, 30 CFR 75.1711 and all other applicable state and federal regulations as soon as practical. Permanent closure measures will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters. With respect to drill holes, unless otherwise approved by the Division, compliance with the requirements of 43 CFR 3484.1(a)(3) or R649-3-24 will satisfy these requirements.

R645-301-631. Casing and Sealing of Exploration Holes and Boreholes. Each permit application will include a description of the methods used to backfill, plug, case, cap, seal or otherwise manage exploration holes or boreholes to prevent acid or toxic drainage from entering water resources, minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area. Each exploration hole or borehole that is uncovered or exposed by coal mining and reclamation operations within the permit area will be permanently closed, unless approved for water monitoring or otherwise managed in a manner approved by the Division. Use of an exploration borehole as a monitoring or water well must meet the provisions of R645-301-551 and R645-301-731. The requirements of R645-301-631 do not apply to boreholes drilled for the purpose of blasting.

R645-301-631.200. Permanent Casing and Sealing of Exploration Holes and Boreholes. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effect, or unless approved for transfer as a water well under R645-301-731.400, each exploration hole or borehole will be plugged, capped, sealed, backfilled or otherwise properly managed under R645-301-551, R645-301-631 and consistent with 30 CFR 75.1711. Permanent closure methods will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery and to keep acid or other toxic drainage from entering water resources.

R645-301-765. Permanent Casing and Sealing of Wells. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under R645-301-731.100 through R645-301-731.522 and R645-301-731.800, each well will be capped, sealed, backfilled, or otherwise properly managed, as required by the Division in accordance with R645-301-529.400, R645-301-551, R645-301-631.100, and R645-301-748. Permanent closure measures will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters.